

11-9540 DESCAMPS V. UNITED STATES

DECISION BELOW: 466 Fed.Appx. 563

LOWER COURT CASE NUMBER: 08-30013

QUESTION PRESENTED:

The California Burglary Statute Section 459 does not require as an element that a burglar "enter or remain unlawfully in a building". The Ninth Circuit held that it could determine whether this "missing element" was shown to have been proven by applying the modified categorical approach.

The issues presented are as follows:

- 1- Whether the Ninth Circuit's ruling in *United States v. Aguila-Montes De Oca*, 655 F.3d 915 (9th Cir. 2011), (*En Banc*) that a state conviction for burglary where the statute is missing an element of the generic crime, may be subject to the modified categorical approach, even though most other Circuit Courts of Appeal would not allow it.
- 2- Whether is it time for this Court to overrule *Almandez-Torres v. United States*, 523 U.S. 224 (1998), apply *Apprendi v. New Jersey*, 530 U.S. 224 (2000), and require an Indictment and trial on the issue of application of the Armed Career Criminal Act.
- 3- Whether the Ninth Circuit's ruling in the instant case was in derogation of the requirements in *Taylor v. United States*, 495 U.S. 575 (1990) and *Shepard v. United States*, 544 U.S. 13 (2005).

LIMITED TO QUESTION 1.

CERT. GRANTED 8/31/2012